

**ARPA AGREEMENT
CITY OF DULUTH
DULUTH ECONOMIC DEVELOPMENT AUTHORITY
MERGE LLC
URBAN DULUTH PROJECT**

THIS AGREEMENT, effective as of the date of execution thereof by the parties hereto as shown below, by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, hereinafter referred to as “City”, the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA", and MERGE, LLC, D/B/A/MERGE URBAN DEVELOPMENT GROUP, LLC , an Iowa limited liability company, hereinafter referred to as “Developer”.

WHEREAS, Developer has acquired certain property located at West Superior Street and 20th Avenue West in the Lincoln Park neighborhood of Duluth and has entered into an agreement with DEDA for the development of the Project described in the development agreement dated August 9, 2021, and bearing DEDA Contract No. 21 860 121 hereinafter referred to as the “Development Agreement”, for the development of a not less than 40 unit apartment building, all of which will be affordable, all as further hereinafter described; and

WHEREAS, City has received an allocation of funds under the American Rescue Plan Act of 2021 sec. 9901, Pub. L. 117-2 codified as 42 U.S.C. 802 et seq. from the federal government for the purpose of ameliorating the impacts of the COVID-19 pandemic which would include actions to ameliorate the shortage of affordable housing to persons of low and moderate income; and

WHEREAS, City and Developer have agreed, subject to the provision of additional assistance by City to Developer as provided for herein and subject to the terms and conditions of this Agreement, that Developer will provide additional units of affordable housing in the Project, as the Project is defined in the Development Agreement; and

WHEREAS, City, DEDA and the Developer have agreed that the provision of the additional affordable housing and the additional assistance from the City shall be provided under the terms and conditions of the Development Agreement except to the extent that inconsistent with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Development Agreement

A. Generally

The parties hereto agree that the Development Agreement between DEDA and Developer dated August 9, 2021, and bearing DEDA Contract NO. 21 860 121 is hereby adopted by reference and shall be deemed to be a part of this Agreement except to the extent that any of the terms or conditions of this Agreement are explicitly contrary to the terms or conditions hereof in which case this Agreement shall be deemed to be controlling as to such terms and conditions.

B. Implementation

The parties agree that City shall be deemed to be a beneficiary of the of the rights and remedies of DEDA under the Development Agreement and shall have the same rights as DEDA to enforce all of the terms and conditions of the Development Agreement including but not limited to those set forth in Article IX and XI of the Development Agreement.

C. Cross Default

The Parties agree that a default under the Development Agreement shall constitute a default under this Agreement and a default under this Agreement shall constitute a default under the Development Agreement.

2. Enhanced Affordable Housing

Upon the issuance of the Certificate of Completion provided for in Paragraph D of Article V of the Development Agreement, Developer agrees that it will commence holding and will hold during the Term of this Agreement all of units of housing which will be held for rent to persons having an income at or below 70% of the area median income at rental rates determined by the United States Department of Housing and Urban Development to be affordable to such persons. The reporting requirements of the Development Agreement shall specifically apply to the housing so provided.

3. Additional Assistance

In consideration of the Developer meeting the requirements of Paragraph 2 above for the Term of this Agreement, City agrees that on upon the issuance of the Certificate of Completion provided for in Paragraph D of Article V of the Development Agreement, City will pay to Developer the sum the of Seven Hundred Eighty-four Thousand, Two Hundred Forty Dollars (\$784,240.00) payable from Fund

_____.

4. Term

The term of this Agreement shall run from the Effective Date hereof until a date Ten (10) Years from and after date of the issuance of the Certificate of Completion provided for in Paragraph D of Article V of the Development Agreement unless sooner terminated as provided for herein or in the Development Agreement; provided that any of the terms and conditions of this Agreement or of the Development Agreement which by their nature shall need to extend beyond the Term hereof in order to give them effect shall be deemed to continue through the time necessary to give them full force and effect.

5. Additional Developer Responsibilities

In addition to providing the Program services provided of in this Agreement the Developer acknowledges and agrees:

A. The City's award of funds to the Developer (FEIN_____) constitutes a sub- award of SLFRF. This is federal funding provided to the City by the United States Department of the Treasury under Assistance Listing Number 21.027. The City made its application (SLT- 1646) for its awarded funds of \$58,117,859 on 5/11/21, received notice of application acceptance on 5/19/21, and received its first payment of federal funds on 5/19/21. City Council Resolution 21-0515R, adopted on 7/19/21, formally acknowledged receipt of the funds and the City's intended use of the funds.

B. The Developer constitutes a sub-recipient. As a sub-recipient, the Developer must follow Uniform Administrative Guidance as referenced in Part D of the Compliance and Reporting Guidance for State and Local Fiscal Recovery Funds issued by the United States Department of the Treasury. The Developer agrees to follow all guidance either directly through its involvement in providing the services or indirectly in the Developer's role of assisting the City with its compliance requirements.

C. The Developer shall comply with, and assist the City in complying with, the Treasury Guidance. This includes providing the City with access to Developer's audit reports, financial records, project performance reports and other additional data the City requires in order to sufficiently meet its obligations under the terms of the SLFRF grant funding.

D. The Developer shall not use, directly or indirectly, or permit others to use, directly or indirectly, funds supplied by the SLFRF for any purpose that would violate any SLFRF requirements.

E. The Developer maintains internal controls, policies, and procedures to ensure appropriate oversight of fiscal management and to ensure the avoidance of fraud, negligence, and mismanagement of funds.

F. The Developer shall maintain records related to the SLFRF program for no less than six years after the termination of this agreement.

G. The Developer shall cause to be performed a Single Audit of the Developer's records if it expends more than \$750,000 in federal funds during any fiscal period during the duration of this agreement.

H. The funds awarded are not R&D related.

I. The Developer agrees that it will only be reimbursed for direct cost of providing the Program services and will not charge any indirect costs to the City.

6. Notices

The notice provisions of Article XVI of the Development Agreement are hereby augmented by providing that, in the case of notices to the City, such notice shall be given in the same manner to:

City of Duluth
Room 120 City Hall
411 West First Street
Duluth, MN 55802
Attn: Finance Director

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

By: _____
Its President

STATE OF MINNESOTA)
) SS
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Matt Cartier President, respectively, of the Duluth Economic Development Authority of Duluth, an economic development authority created and existing under Minnesota Statutes, on behalf of the Authority.

Notary Public

Attest:

By Chelsea Helmer
Its City Clerk

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Chelsea Helmer the City Clerk of the City of Duluth, a Minnesota municipal corporation on behalf of the city.

Notary Public

Merge, LLC, D/B/A MERGE URBAN DEVELOPMENT GROUP
An Iowa limited liability company

By: _____
Name: _____
Its: _____

STATE OF MINNESOTA)
) SS
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, the _____ of Merge, LLC, d/b/a Merge Urban Development Group, an Iowa limited liability company, for and on behalf of the company.

Notary Public

This instrument was drafted by:

Robert Asleson
Attorney for the Duluth Economic
Development Authority
410 City Hall
Duluth, MN 55802
(218) 730-5490

Developer is deemed to be a “Subrecipient” under the American Rescue Plan Act of 2021 sec. 9901, Pub. L. 117-2 codified as 42 U.S.C. 802 et seq a 2 CFR 200.332. As used herein, the term “Subrecipient “ shall be deemed to refer to the Developer. The following information shall be deemed to be part of the Agreement:

- U.S Department of Treasury
City of Duluth – Finance Department
411 W 1st Street, Room 120
Duluth, MN 55802

EXHIBIT A

11. Assistance Listing number & Title: 21.027 Coronavirus State and Local Fiscal Recovery Funds

12. Indirect Cost Rate: De Minimus. (N/A)